ZAINAL EFFENDI MOHD DAUD

v.

SURUHANJAYA PERKHIDMATAN AWAM MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
MOHD HISHAMUDIN YUNUS J
[CIVIL SUIT NO: S3-21-90-2000]
8 OCTOBER 2003

CIVIL PROCEDURE: *Action - Dismissal of action - Absence of plaintiff's counsel - Pre-trial case management directions given by judge not complied with - No explanation offered - Defendant not objecting to plaintiff's request for postponement - Whether postponement should be denied - Whether plaintiff's entire action should be dismissed - Rules of the High Court 1980, O. 34 r. 7*

On 30 July 2003, during case management, the learned judge directed the parties to file the following items on or before 29 September 2003: (i) the Bundle of Documents; (ii) the Statement of Agreed Facts; (iii) the Agreed Main Facts; and (iv) the List of Witnesses. Both counsel for the plaintiff ('RKS') and counsel for the defendants ('AM') were present. On the subsequent case management date, RKS was absent and the court was informed by another advocate and solicitor ('WKP') from the same firm that RKS had to attend to another case in the Sessions Court in Kuala Lumpur. WKP also requested a final postponement after informing the court that the directions of the learned judge given on 30 July 2002 had yet to be complied with.

Held (dismissing the plaintiff's entire action):

[1] The plaintiff's failure to comply with the directions of the learned judge given during pre-trial case management without a satisfactory explanation was a very serious matter. It could not be condoned by the court. Consequently, although not canvassed for by the defendants, the plaintiff's action should be dismissed under O. 34 r. 7 Rules of the High Court 1980. This would meet the ends of justice. (pp 644 b-e)

Legislation referred to:
Rules of the High Court 1980, O. 34 r. 7

For the plaintiff - KP Wong; M/s Karpal Singh & Co
For the defendants - Asmabi Mohamad SFC

Reported by Gan Peng Chiang

JUDGMENT

Mohd Hishamudin Yunus J:
On 30 July 2003, during case management, I gave certain directions to the parties pertaining to the filing of:

(1) the filing of bundle of documents;

(2) the filing of the statement of agreed facts;

(3) the filing of the agreed main issues; and

(4) the filing of the list of witnesses.

Present during the case management was Encik Ram Karpal Singh for the plaintiff and Puan Asmabi, senior federal counsel, for the defendants.

All the above documents had to be filed and served by the plaintiff on or before 29 September 2003 (except for the defendants' list of witnesses which had to be filed and served by the defendants on or before the same date).

I then fixed 8 October 2003 for further case management.

However, on 8 October 2003, when the case was called up for further case management, only the senior federal counsel, Puan Asmabi, representing the defendants was present. The counsel for the plaintiff, Encik Ram Karpal Singh, was absent. In his place was Encik KP Wong, who informed the court that Encik Ram Karpal Singh could not be present as he had to attend to another case in the Sessions Court Kuala Lumpur. No explanation was given as to why Encik Ram had to attend the Session Court case instead of the present case. On 30 July, when the date 8 October was fixed as the date for further case management, it was fixed with the agreement of Encik Ram Karpal Singh as well.

Encik Wong further informed the court that the directions given by the court on 30 July have not been complied with. Again no explanation whatsoever was given for the non-compliance.

Encik Wong requested for a final postponement.

The learned senior federal counsel, Puan Asmabi, informed the court that since 30 July 2003 the plaintiff's counsel had not sent her any proposal or document for her to act upon. But she did not object to the application for a postponement.

However, in the exercise of my powers under O. 34 r. 7 of the Rules of the High Court 1980, I dismissed the plaintiff's action with costs.

In my view, the failure to comply with my directions of 30 July, without a satisfactory explanation by the plaintiff, is a very serious matter and should not be condoned by the court. The plaintiff was given two months to comply with the directions. He had ample time to do so. Yet, regrettably, he did not do anything. As confirmed by the senior federal counsel, he did not even serve any proposal or document to the defendants. And not only that: despite the failure to comply, no attempt was made by the counsel responsible to be present in court and to offer an explanation. Thus, I take the stand that the dismissal of the plaintiff's action by the court meets the ends of justice.

It might be argued that since the learned senior federal counsel did not object to the application for a postponement by the plaintiff's counsel, it was not proper for the court not to grant an adjournment. Should such an argument be raised, I would say that the court was right in doing what it did. For justice is not due to the contesting parties alone: the court is also entitled to justice and respect. I think it is a most unfair and undesirable and an affront to the dignity of the court to have a system where a party could blatantly disregard directions issued the court and yet the court is helpless to do anything about it, just because the opposing party did not press for any sanction against the errant party.